IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3339 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BACHUBHAI V ASARI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :

MR MM JADEJA for Petitioner(s) : 1,MR MS DESAI for Petitioner(s) : 1,
Mr. M.R. Mengdey, AGP for Respondent(s) : 1 - 2.
MR AJ PATEL for Respondent(s) : 3,6 - 8.
RULE SERVED for Respondent(s) : 4 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/08/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and order dated 28th December 1987 passed by the Deputy Secretary (Appeals), Revenue Department, State

of Gujarat, in Revision Application SRD No. 918/1986 by which the revisional authority has quashed and set aside the order passed by the Collector, Sabarkantha in Appeal No. 45/1986.

2. It appears from the record, that the dispute is with regard to some portion of Gauchar land from the land bearing Survey No. 27 situate at Village Raypur, Taluka-Bhiloda, District-Sabarkantha and that the petitioner herein was cultivating some portion of the said Gauchar land without any permission. He therefore submitted an application before the Raipur Gram Panchayat to allot the land which was being cultivated by him on permanent basis, and pursuant to the resolution passed by the Raypur Gram Panchayat the Collector, Sabarkantha by order dated 18.5.1979 passed under Section 98 of the Gujarat Panchayat Act resumed the land to the State Government and thereafter the matter was referred to the Deputy Collector, Himmatnagar for initiating appropriate proceedings for disposal of the said land, and the Deputy Collector, Himmatnagar in turn after considering the representations and statements of the village people passed the order in March 1984 to keep the land in question as Government land for development of the village people. It appears from the record that being aggrieved and dissatisfied with the order passed by the Deputy Collector, Himmatnagar, the petitioner preferred appeal before the Collector, Sabarkantha, being Appeal No. 45/1986

which was allowed by the Collector while granting the land in question in favour of the petitioner on permanent basis on certain conditions. Being aggrieved and dissatisfied with the order passed by the Collector, Sabarkantha in Appeal No. 45/1986, the respondents No. 4 to 8 herein preferred Revision Application SRD No. 918/1986 before the Secretary (Appeals), Revenue Department, State of Gujarat, and considering the submissions made on behalf of the petitioner and the respondents No. 4 to 8 herein, the Deputy Secretary (Appeals) holding that the Collector has not considered the case as to requirement of the land for the benefit of the village people quashed and set aside the order passed by the Collector, Sabarkantha and restored the order passed by the Deputy Collector. Being aggrieved and dissatisfied with the order passed by the revisional authority dated 28th December 1987 in Revision Application SRD No. 918/1986 the petitioner herein, the allottee, has preferred the petition under Article 226/227 of the Constitution of India.

3. The learned advocate appearing on behalf of the petitioner is not present when the matter is called out for hearing. Therefore, this Court has heard the learned advocate appearing on behalf of the respondents. It appears from the record that the main reason while quashing and setting aside the order passed by the Collector, Sabarkantha and allowing the order passed by the Deputy Secretary

(Appeals) in revision application is that the Collector has not considered and/or dealt with and/or discussed the submissions made on behalf of the village people of the Raipur Gram Panchayat with regard to requirement of the land for public interest and/or for village people. If that be so, then the Deputy Secretary ought to have remanded the matter to the Collector instead of restoring the order passed by the Deputy Collector. Under the circumstances, without expressing any opinion on merits, the matter is required to be remanded to the Collector, Sabarkantha, for taking fresh decision in accordance with law and on merits after hearing all the parties inclusive of Raipur Gram Panchayat and after considering the observations made in the order passed by the Deputy Secretary (Appeals), Revenue Department in Revision Application No. SRD 918/1986 looking to the need and interests of the village people.

4. For the reasons stated hereinabove, the present Special Civil Application is partly allowed. The judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, dated 28.12.1987 in Revision Application SRD No. 918/1986 is hereby quashed and set aside. The matter is remanded to the Collector for deciding Appeal No. 45/1986 afresh in accordance with law and on merits after giving opportunity to all the

concerned parties including Raipur Gram Panchayat. However, during the pendency of the proceedings and its conclusion before the Collector, the parties are directed to maintain status-quo. The Collector, Sabarkantha is directed to take appropriate decision, on remand, as early as possible preferably within 4 months from the date of receipt of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.